

## Part 7

### Preneed Funeral Arrangement Requirements

#### 58-9-701 Preneed contract requirements.

- (1)
  - (a) A preneed funeral arrangement sold in Utah shall be evidenced by a written contract.
  - (b) The funeral service establishment shall maintain a copy of the contract until five years after all of the establishment's obligations under the contract have been executed.
- (2) The form for a written contract of a preneed funeral arrangement under Subsection (1) shall:
  - (a) be written in clear and understandable language printed in an easy-to-read type size and font;
  - (b) bear the preprinted name, address, telephone number, and license number of the funeral service establishment obligated to provide the services under the contract terms;
  - (c) clearly identify that the contract is a guaranteed product contract;
  - (d) provide that a trust is established in accordance with the provisions of Section 58-9-702;
  - (e) if the contract is funded by an insurance policy or product, provide that the insurance policy or product is filed with the Insurance Department and meets the requirements of Title 31A, Insurance Code; and
  - (f) conform to other standards created by rules made by division under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to protect the interests of buyers and potential buyers.
- (3) A preneed funeral arrangement contract shall provide for payment by the buyer in a form which may be liquidated by the funeral service establishment within 30 days after the day the funeral service establishment or sales agent receives the payment.
- (4) A preneed funeral arrangement contract may not be revocable by the funeral service establishment except:
  - (a) in the event of nonpayment; and
  - (b) under terms and conditions clearly set forth in the contract.
- (5)
  - (a) A preneed funeral arrangement contract may not be revocable by the buyer or beneficiary except:
    - (i) in the event of:
      - (A) a substantial contract breach by the funeral service establishment; or
      - (B) substantial evidence that the funeral service establishment is or will be unable to provide the personal property or services to the beneficiary as provided under the contract; or
    - (ii) under terms and conditions clearly set forth in the contract.
  - (b) The preneed funeral arrangement contract shall contain a clear statement of the manner in which payments made on the contract shall be refunded to the buyer or beneficiary upon revocation by the beneficiary.
- (6)
  - (a) A preneed funeral arrangement contract shall provide the buyer the option to require the funeral service establishment to furnish a written disclosure to a person who does not live at the same residence as the buyer.
  - (b) The preneed funeral arrangement buyer may choose:
    - (i) a full disclosure containing a copy of the entire preneed funeral arrangement contract;
    - (ii) a partial disclosure informing the recipient of:
      - (A) the existence of a preneed funeral arrangement contract; and

- (B) the name, address, telephone number, and license number of the funeral service establishment obligated to provide the services under the preneed funeral arrangement contract; or
- (iii) not to require the funeral service establishment to furnish a written disclosure to another person.

Amended by Chapter 30, 2012 General Session

**58-9-702 Payments to be held in trust -- Trustee qualifications.**

- (1) All money representing payments for the purchase of a preneed funeral arrangement shall be deposited by the provider or sales agent receiving the payment:
  - (a) within 10 business days after the day on which the provider or sales agent receives the payment in the form of cash or cash equivalent; or
  - (b) within 35 calendar days after the day on which the provider or sales agent receives the payment in the form of a negotiable instrument.
- (2) All money received under Subsection (1) shall be placed in a trust account naming as trustee a Utah financial institution authorized to engage in the trust business under Title 7, Chapter 5, Trust Business.

Enacted by Chapter 49, 2003 General Session

**58-9-703 Trust agreement.**

- (1) Each trust established by a funeral service establishment shall be administered in accordance with a trust agreement conforming with:
  - (a) the requirements of this chapter;
  - (b) rules adopted with respect to this chapter;
  - (c) the provisions of Title 75, Chapter 7, Utah Uniform Trust Code; and
  - (d) all other state and federal laws applicable to trusts and trust agreements.
- (2) Each trust agreement shall require that the funeral service establishment maintain a copy of the trust agreement until five years after all of its obligations under the trust agreement have been executed or transferred.
- (3) Each trust agreement shall require that the trustee:
  - (a) separately account for each contract; and
  - (b) separately record payments with respect to each contract made into the corpus of the trust.
- (4) Each trust agreement shall provide for distributions from the trust in accordance with the provisions of this chapter upon:
  - (a) the death of the beneficiary;
  - (b) revocation of the contract by the funeral service establishment upon nonpayment by the buyer; or
  - (c) revocation of the contract by the beneficiary or buyer.

Amended by Chapter 144, 2007 General Session

**58-9-704 Interest earned on trust funds.**

Interest earned on trust funds shall be available for expenditure according to the following priority:

- (1) to pay the reasonable trustee expenses of administering the trust within a maximum amount established by rule;

- (2) to pay within a maximum amount established by rule under Section 58-9-504 the reasonable provider expenses associated with:
  - (a) the sale of the plan;
  - (b) administering the collection, remittance, and accounting of the amount of payments made into the corpus of the trust; and
  - (c) reporting required with respect to those contracts:
    - (i) that have been sold; and
    - (ii) under which the provider is obligated;
- (3) to pay the costs of providing any of the following for which the provider is obligated under a specific outstanding preneed funeral arrangement contract:
  - (a) personal property; and
  - (b) services at need; and
- (4) to pay the provider available funds left in the individual trust account after:
  - (a) all costs of providing personal property and services for which the provider is obligated under the contract underlying the trust; or
  - (b)
    - (i) the contract is canceled as provided under this chapter; and
    - (ii) all amounts payable to the buyer, beneficiary, or any other person have been paid in full.

Enacted by Chapter 49, 2003 General Session

**58-9-705 Distribution of funds.**

- (1) Interest earned on trust funds shall be available to the provider according to the priority set forth in Section 58-9-704.
- (2) The amount of payments made into the corpus of the trust and any other amount which has been paid into the corpus of the trust shall be paid to the provider in the amount credited to a specific account upon the event of one of the following:
  - (a) the death of the beneficiary which shall be demonstrated to the trustee by the provider by furnishing to the trustee:
    - (i) a request for payment from the trust; and
    - (ii) a certified copy of the death certificate of the beneficiary; or
  - (b) revocation of the preneed funeral arrangement contract by either the provider or the buyer according to the terms and conditions of the contract, which shall be demonstrated to the trustee by the provider by furnishing to the trustee satisfactory evidence that:
    - (i) the contract has been revoked; and
    - (ii) the provider has paid all funds due to the buyer or beneficiary.
- (3) Upon an order of a court having jurisdiction, all amounts that have been paid into the corpus of the trust shall be paid to the buyer or beneficiary in the event of:
  - (a) a judgment to the benefit of a buyer or beneficiary upon a finding that:
    - (i) the provider is in substantial breach of the contract; or
    - (ii) there is substantial evidence that the provider is or will be unable to provide the personal property or services to the beneficiary under the contract;
  - (b) a judgment of bankruptcy against the provider; or
  - (c) a finding by the court that determines the funds should be rightfully returned to the buyer or beneficiary.

Amended by Chapter 353, 2008 General Session

**58-9-706 Trust funds and insurance reports.**

- (1)
  - (a) Each funeral service establishment shall maintain an annual report of preneed trust funds and insurance.
  - (b) The report shall contain:
    - (i) the name of the trustees with which the funeral service establishment has trust funds on deposit; and
    - (ii) the amount remaining on deposit in the trust fund on:
      - (A) December 31 of the preceding year; or
      - (B) another annual reporting period as the division may establish.
- (2) Each funeral service establishment may be audited by the division at any time.

Amended by Chapter 144, 2007 General Session

**58-9-707 Records of trustee -- Contents.**

- (1) The trustee shall keep an orderly record of all agreements.
- (2) The record shall contain:
  - (a) the name and address of the person making a payment;
  - (b) the date and the amount of each payment made;
  - (c) the date and amount of each withdrawal and to whom paid; and
  - (d) the name of the bank or trust company depository.

Amended by Chapter 144, 2007 General Session

**58-9-708 Audits.**

- (1)
  - (a) The division may at any time:
    - (i) audit records of the provider; and
    - (ii) inspect records of the provider.
  - (b) The provider or trustee shall make available to the division for examination, inspection, or auditing all records pertaining to the accounts relating to:
    - (i) any contract sold under this chapter; and
    - (ii) any trust established under this chapter.
- (2)
  - (a) The director may employ experts from outside the division if special need exists to perform examinations, inspections, and audits under this section.
  - (b) The provider shall be responsible for payment to the division of all reasonable and necessary costs related to the employment of experts under this section.

Enacted by Chapter 49, 2003 General Session